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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,638	03/18/2004	Volker Buhren	TRAUMA 3.0-454	5367
530	7590	11/14/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,638	<b>Applicant(s)</b> BUHREN ET AL.	
	<b>Examiner</b> Richard R. Shaffer	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 6<sup>th</sup>, 2006 has been entered.

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claim 16 recites the limitation "internal surfaces including **side walls perpendicular to and intersecting the bone contacting surface...**" Then in claim 22 states "at least one recess on the underside of

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the load-bearing element, in which the locking mechanisms can be engaged, so that the insert, does not extend beyond the aforementioned underside." This limitation is directed to Figure 9, however due to independent claim 16 reciting the side wall being perpendicular and intersecting the bone contacting surface (as seen in Figures 2 and 8), such an invention is not enabled by the disclosure as originally filed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 5-8 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the locking mechanisms" in line 2. There is insufficient antecedent basis for this limitation in the claim. Only support for "the at least one locking mechanism" is found in claim 1.

Claim 6 recites the limitation "wherein the insert exhibits at least one locking mechanisms which can interact..." This causes the claim to be indefinite, is another locking mechanism being added in addition to the one previously claimed in claim 1. Also, in claim 8, when applicant uses "the locking mechanism," one having ordinary skill in the art would be confused as to which locking mechanism applicant is referring to.

Claims 7 and 8 are rejected for being dependent upon an indefinite base claim.

Claim 20 recites the limitation "the locking mechanisms" in line 2. There is insufficient antecedent basis for this limitation in the claim. Only support for "the at least one locking mechanism" is found in claim 16.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Haag et al (US Patent 5,976,141).

Haag et al disclose a device (**Figures 1-8**) comprising: an elongated load-bearing element/plate (**100**) having an opening (**101**); the opening (**101**) having an outwardly facing surface (**102** or **104** depending upon orientation) that tapers inward towards the bottom surface (**105** or **103** depending upon orientation); multiple (**Column 3, Lines 22-25**) elongated (as can be seen in **Figure 1** and described in **Column 3, Lines 1-2**) insert (**301**) with a form (see **Figures 3-6**) generally complementary to the recessed outwardly facing surface (**102**); the insert exhibiting a central through-bore (**310**) with a non-normal inclined axis (**313**) relative to the principal plane of the load-bearing element/plate (**100**); a fixation element (**200**); the insert exhibits locking mechanisms to lock with the internal surface of the load-bearing element/plate (**100**); the locking mechanism/insert having an extension (either groove corresponding to **23, Figure 2** or groove (**321**) and projections (portions corresponding to either tapered section immediately adjacent **23, Figure 2**).

Claims 16-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Klaue et al (US Patent 5,810,823).

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Klaue et al disclose a device (**Figures 3-7**) comprising: an elongated (as seen in **Figure 3**) load-bearing element (**120**); a fixation element (**115**); an insert (**201**); an opening (**121**) within the load-bearing element (**120**) having perpendicular side walls (near **122** in **Figure 4**) and a recessed surface tapering outwards (**127**); the insert having locking means/extensions (**206**); and the insert having an angled through bore (shown in **Figure 6**).

Claims 16-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Richelsoph (US Patent 6,171,311).

Richelsoph disclose a device (**Figure 1**) comprising: an elongated load-bearing element (**12**); a fixation element (**20**); an insert (**16 and 54 together**); an opening within the load-bearing element (**12**) having perpendicular side walls (where **54** abuts the inner side wall) and a recessed surface tapering outwards (**24**); the insert having locking means/extensions (**54**).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

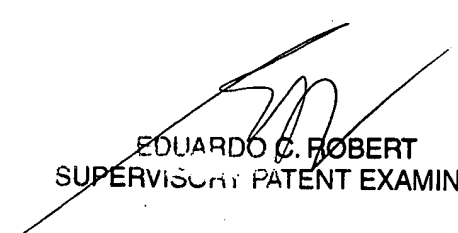
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
November 9<sup>th</sup>, 2006



EDUARDO C. ROBERT  
SUPERVISOR PATENT EXAMINER